Annual Report on the Activities of the Rental Office

January 1-December 31, 2001

Submitted by
Hal Logsdon
Rental Officer

The Rental Office

The establishment of the Rental Office and the appointment of a Rental Officer came into effect in 1988 with the passage of the *Residential Tenancies Act*. The Act gives the Rental Officer specific powers and duties which are designed to resolve disputes between landlords and tenants who have entered into residential tenancy agreements. The Rental Office provides an important service to both landlords and tenants, not only as a dispute resolution mechanism, but also as a convenient source of information regarding the obligations and responsibilities of both landlords and tenants.

A Source of Information for Landlords and Tenants

The Rental Office is an important source of information for both landlords and tenants. Many tenancy problems can be solved simply by understanding your rights and responsibilities as either a landlord or tenant. Many tenants and a surprising number of landlords are unaware of the legislation that governs their relationship. The provision of information is probably the single most important function of the office, serving to eliminate conflict and problems before they start.

The Rental Office also provides written information, including fact sheets and numerous standard forms consistent with the NWT legislation. Like the day-to-day responses to inquiries, the written material helps with the understanding of mutual rights and responsibilities and helps to solve problems before they start.

From time to time the Rental Officer is called upon to make presentations to groups of tenants, property managers or others involved in residential tenancy matters. We provide these services free of charge in the belief that informed and knowledgeable landlords and tenants are more likely to respect the rights and obligations of each other and less likely to end up in a conflict situation.

The Investigation of Problems and Mediated Solutions

Problems are often reported to the Rental office without a formal application being filed. For example, tenants often call when a landlord has failed to promptly return a security deposit. A brief investigation into the matter and a verbal notification of the results to the parties are often all that is necessary to resolve the problem. Occasionally, the parties will agree to a mediated solution to a problem without recourse to a formal hearing or the issuance of an order.

Adjudication

Often, landlords and tenants can not agree or one of the parties wants a decision which can be enforced, should the other party fail to abide by that decision. In these cases, the Rental Officer is empowered to hold a hearing and, after hearing the evidence and testimony of both parties, render a decision which has the same force as a Territorial Court order. Most disputes are settled in this manner as the majority of disputes concern non-payment of rent and an enforceable decision is desired by the applicant.

Enforcement of the Act

The contravention of certain sections of the *Residential Tenancies Act* and certain actions described in the Act are offences. Upon summary conviction, offenders are liable to a fine. Few choose to ignore the law when informed but occasionally the Rental Officer is required to investigate allegations of contraventions which could lead to charges being laid.

2001 Activities

Mr. Hal Logsdon served as Rental Officer throughout the year. Mr. Logsdon was appointed on April 1, 1999. Ms. Kim Powless continued to serve as the Rental Office Administrator during the year.

The success of the short fact sheet *What You Should Know About Rent Increases* led to the development of several others, including *What You Should Know About Security Deposits* and *What You Should Know About Assignment and Subletting*.

The Department of Justice website now includes some information on the Rental Office as well as a link to the *Residential Tenancies Act.*

The Rental Officer met with several property managers in Fort Providence to familiarize them with the Act, procedures for filing applications and the hearing process. We also met with property managers from the YWCA to discuss tenancy agreements and elements of the Act which pertain specifically to social housing agencies.

Thanks to the development of video-conferencing facilities by the Government of the NWT, the Rental Officer was able to conduct a small number of hearings in Inuvik using the new technology. The facilities permit the Rental Officer to hear matters more quickly, eliminating travel time and expense, while allowing face to face contact between all parties and the Rental Officer. The technology represents a significant improvement over telephone hearings.

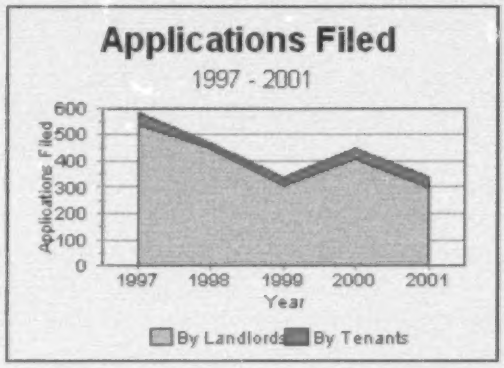
Based on an information filed by the Rental Officer, one landlord was prosecuted under the *Residential Tenancies Act* for failing to obey an order of a Rental Officer. To the best of our knowledge this was the first prosecution under the *Residential Tenancies Act* since it was enacted in 1988. The landlord was convicted on two counts of failing to obey an order of a Rental Officer and fined.

Trends and Issues

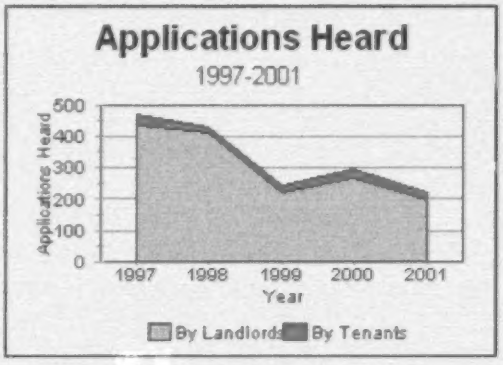
The economic activity in the NWT associated with the development of the new diamond mines in the Yellowknife area and oil and gas exploration in the Mackenzie Delta has served to significantly increase the demand for rental accommodation. Coupled with higher utility costs, the increased demand sparked the first significant rent increases in several years in both Inuvik

and Yellowknife. By the end of the year, many landlords had taken the opportunity to raise rents and were reporting apartment vacancy rates of 1% or less.

While some speculated that the number of applications would increase in 2001 due to lower vacancy rates and higher rents, the total number of applications decreased by 24% from 2000 levels. Landlords, who might be expected to become less tolerant of rent arrears and therefore file more frequently, actually filed 25% fewer applications than in 2000. On the other hand, applications from tenants increased. Landlords continued to file the majority of applications, mostly for rent.

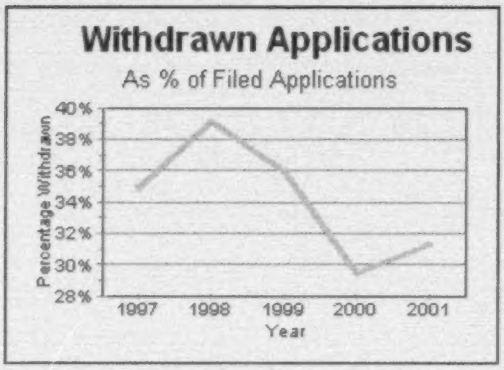


The Rental Officer conducted 221 hearings in 2001, of which 88% were based on applications filed by landlords. This represents a 25% decrease in the total number of hearings compared to 2000. Hearings were held on 59 dates during the year. 164 hearings were conducted in person, 53 were conducted by telephone and 4 conducted by videoconference. Telephone hearings continue to be an effective way to hear matters in a timely manner, particularly when only one or two applications are received from a community outside Yellowknife or when the parties reside in different communities. Videoconference hearings are a great improvement over telephone hearings but the number of locations where video facilities exist is still very limited.



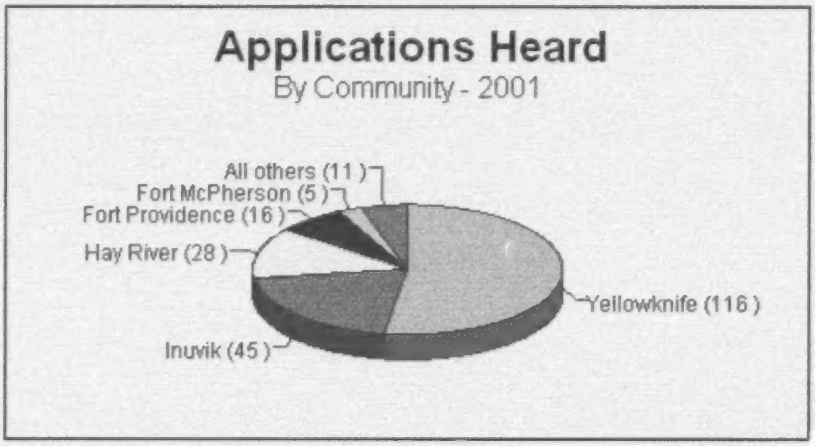
Formal mediation of disputes continues to be an uncommon occurrence. Most disputes involve the non-payment of rent, many of which are uncontested by the respondent. It is common to mediate a scheduled repayment of the rental arrears, but the applicant normally wants such a schedule included in an order so that it is enforceable. The unwillingness to participate in mediated settlements is largely a function of the time it takes to obtain a order. Few applicants want a mediated settlement if they must then initiate a lengthy process to obtain an enforceable order if the mediated agreement falls apart.

Often, the dispute between parties is resolved to the satisfaction of the applicant before a hearing is held, resulting in the withdrawal of the application by the applicant. In other cases, the application is withdrawn by the Rental Officer because the applicant has failed to serve the application on the respondent. The number of applications withdrawn by applicants fell sharply in 2001 but the number withdrawn by the Rental Officer rose.

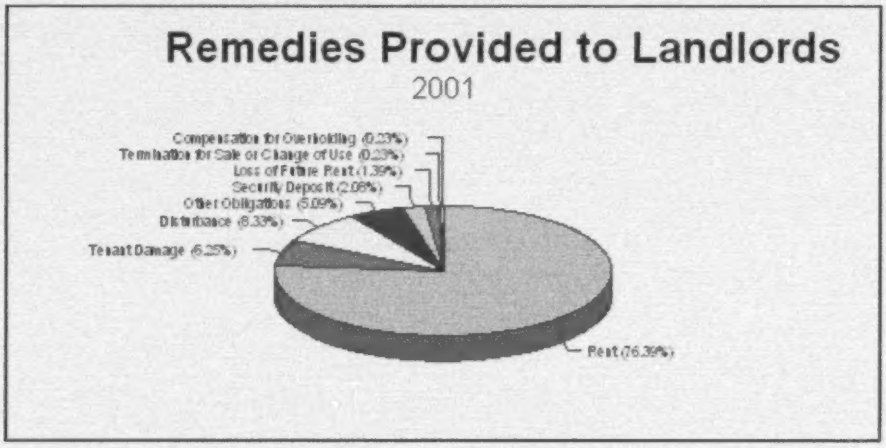


Although landlords file the majority of applications, tenants rely on the Rental Office as a source of information and make good use of the toll-free number to make inquiries. The number of inquiries about information on the internet also appear to be increasing. Access to information through the internet may not entirely replace the telephone as a means of inquiry but does enable the public to download printed material which can take a week or more to get from place to place via the mail system.

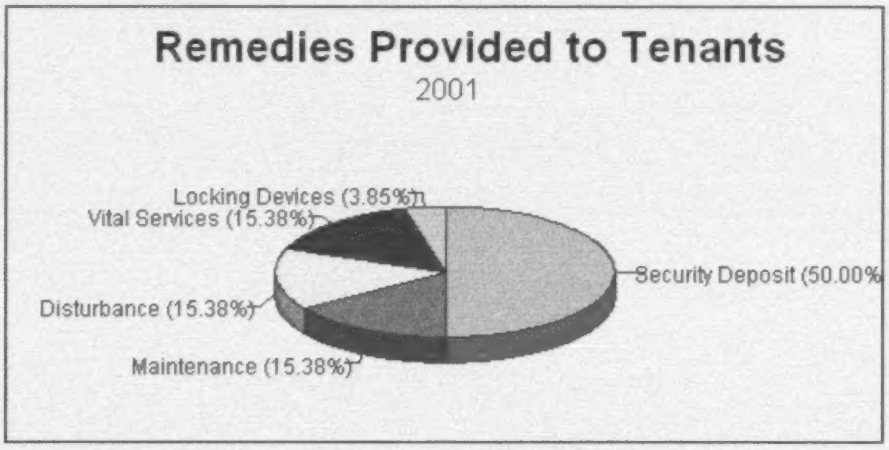
Applications are received from most communities in the NWT but applications from the major centres, particularly Yellowknife and Inuvik, continue to make up the bulk of filed applications. The distribution of applications filed from Western Arctic communities in 2001 shifted little from 2000 levels.



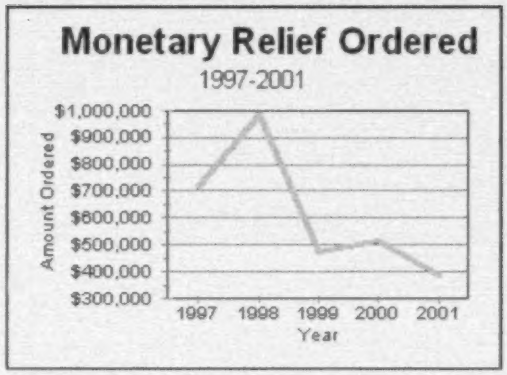
The majority of remedies provided to landlords are for the payment of rental arrears, followed by remedies for disturbance and tenant damages to the premises.



Remedies most commonly provided to tenants involve the return of security deposits retained by the landlord after the termination of the tenancy agreement followed by remedies for the landlord's failure to provide vital services, disturbance of the tenant's enjoyment or possession of the rental premises and failure of the landlord to maintain the premises.



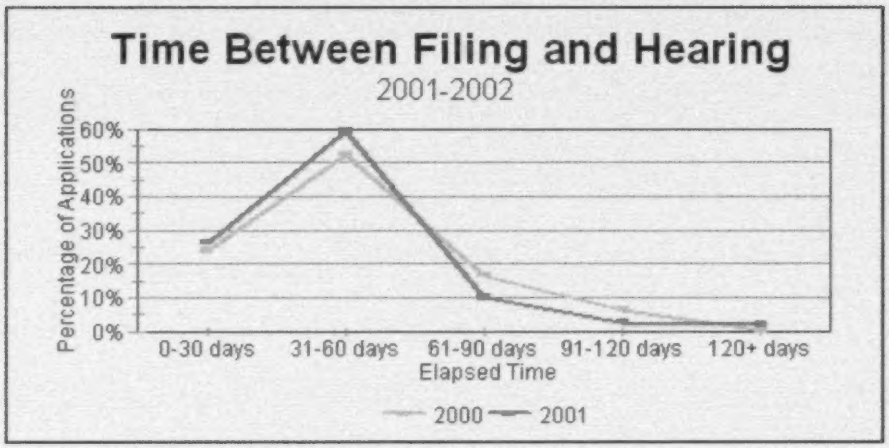
In 2001, 179 orders were issued which required monetary payment to be paid by one party to the other. The total value of these orders was $390,358. Although this is a decrease from 2000 in the gross amount of compensation ordered, the average value of compensation orders increased marginally.



The number of terminations ordered decreased in 2001 but expressed as a percentage of applications heard, increased slightly. Of all orders issued in 2001, 40% included an order for termination of the tenancy agreement between the parties. It should be noted however that many of these termination orders were conditional in nature and did not necessarily result in the termination of the tenancy agreement. In many cases involving rent, the order issued will terminate the tenancy agreement unless the tenant pays the rent arrears by a particular date.

We have no way of tracking how many orders for termination actually result in a termination of the tenancy agreement but we suspect that many conditional termination orders are satisfied and the tenancy continues.

The time it takes from the time an application is filed to the time it is heard depends on a number of factors, some of which are outside the control of the Rental Office. Users of the services ooccasionally complain about the length of time it takes to resolve a dispute and we are doing what we can to make the administration of the process move as rapidly as possible. In this regard we continue to make significant progress. 76.6% of applications heard in 2000 were heard within 60 days of filing and 93.2% were heard within 90 days of filing. In 2001 the percentage of applications heard within 60 days increased to 85.4% and those heard within 90 days of filing increased to 95.4%



It has
been our experience that where the filed application is not delayed by mail, the applicant serves the respondent quickly, the hearing notices are deliverable and the parties do not seek any postponements, an application will be heard within 60 days of filing. However any or all of the above factors can delay the process considerably, and often do.

Considerations for Change

The following suggestions for legislative changes have been assembled from our experience in administering the *Residential Tenancies Act*, and through discussion with landlords and tenants about their experiences with the Act.

1. **Amend section 54 to allow for a binding termination notice subject to appeal by the tenant in cases where a substantial breach of the tenancy agreement has occurred.** Perhaps the most common complaint concerning the administration of the *Residential Tenancies Act* is the length of time it takes to terminate a tenancy agreement where a tenant has substantially breached the tenancy agreement.

   The inability of the legislation to provide timely remedies for substantial breaches of the tenancy agreement has, on numerous occasions, prompted landlords to take eviction into their own hands rather than suffer economic loss or watch their quality tenants seek accommodation elsewhere. Increased losses inevitably translate into business expenses which in turn drives rents higher and produces higher social housing costs. Tenants as well, are adversely affected by the inability of the Act to deal promptly with these remedies. The noisy, disturbing or dangerous tenant can continue to annoy or threaten the safety of other tenants for months on end before the landlord is able to terminate the tenancy and provide the other tenants with the environment they promised to supply.

Section 54 of the Act is intended to provide early termination of the tenancy agreement in cases of a serious or repeated breach by a tenant, but in reality only permits the landlord to give notice. If the tenant does not vacate the premises, the landlord must proceed with an application to the Rental Officer, serve the tenant and await a hearing to obtain an order. If the landlord is successful in obtaining an order for termination and the tenant does not vacate, the landlord must then make application to the Supreme Court for a order of eviction. The entire process can take weeks or months depending on the location of the premise and the scheduling of hearings and court. A tenant who is seriously damaging the premises and\or not paying rent may create an extraordinary loss for the landlord before a order of eviction is obtained. As well, a tenant who is constantly creating a disturbance may continue to disturb other tenants or even jeopardize their safety for months before the landlord can legally remedy the situation.

A revision of section 54 to allow for a termination notice to result in a legal termination of the tenancy agreement unless appealed by the tenant within a specified period of time would cut down on the time required for termination when serious breaches are involved. The landlord would be required to use an approved form of the termination notice and be required to prove service of the notice on the tenant. The notice would specifically advise the tenant of the right to appeal and the process for filing such an appeal. If the tenant appealed, the Rental Officer would hear the matter. If the tenant failed to appeal, the tenancy would terminate and the landlord could seek a writ of eviction from the Supreme Court.

2. **Increase time allowed for the service of filed application on the respondent**
Currently filed applications are required to be served within 14 days from the date of filing (Sec. 68(2)). There may be some question at law as to whether or not an application is valid if not served within the specified time. The Rental Officer is not provided with the authority to extend this time requirement. Given our geographical area and postal system this provision has been proved to be unrealistic. It is suggested that the time limit be extended to 25 days or that the Rental Officer have the authority to extend the time period.

3. **Amend section 62(1) to change the reference to section 9(2) to read section 5(2).**
This is a typographical error.

4. **Amend section 52 to require a 30 day notice for a tenant to terminate a monthly periodic tenancy agreement, regardless of the duration of the agreement.**
The current distinction, based on the duration of the tenancy agreement is unnecessary and makes it difficult for tenants to make a transition between one tenancy agreement and another. I see no reason for the distinction and most landlords and tenants fail to see why the duration of the agreement should be a factor.

5. **Amend section 14 to permit a deposit to hold rental premises for a future tenancy and expressly prohibit the collection of a security deposit prior to the effective date of the tenancy agreement.**

Landlords are not permitted to collect any deposit or fee other than the security deposit allowed under section 14. Although the security deposit is supposed to be collected at the commencement of the tenancy, landlords will often collect it in advance of the occupancy date. Occasionally the prospective tenant will fail to take possession and the landlord will claim the security deposit as damages. The landlord has no right in law to do this as only damages to the premises and rent may be deducted from a security deposit. The prospective tenant can not file an application since section 14 permits only applications from tenants and landlords.

Provisions which would allow for a deposit to hold rental premises would be useful to both landlord and tenant. The maximum amount should be prescribed and, provided the tenancy commences, would have to be applied to rent or the security deposit at the commencement of the tenancy. If the tenant failed to take possession, the deposit would be forfeited.

Provisions should also be made to specifically prohibit the collection of a security deposit prior to the commencement of the tenancy and provide remedies and/or penalties in cases where this prohibition is violated.

6. **Amend sections 16 and 41(3) to allow for rates of interest to be fixed by regulation.**

The interest rates for late rent penalty and security deposits are not only unrealistic, but cumbersome and difficult to calculate. The interest rate for late rent is so low that rent will likely be the last item anyone pays if they find themselves short of funds.

Similarly the rate for security deposits is usually higher than the landlord is able to obtain unless he violates the provisions of maintaining the amounts in trust. The rate and the method of calculation should be reasonable, simple and set through regulation.

7. **Eliminate the "subsidized public housing" definition and introduce a "social housing" definition which would include housing programs and providers approved by regulation.**

The current definition, which relies in part on receiving funding through the *National Housing Act* or *Northwest Territories Housing Corporation Act*, no longer reflects the realities of social housing in the NWT. Important provisions regarding security of tenure, subletting, eligibility and continued occupancy, rent increases and security deposits are tied to this definition which is quickly becoming obsolete.

We suggest that a definition "social housing" replace the current "subsidized public housing" definition. Specific projects to be considered "social housing" would be approved by regulation which could be amended from time to time.

8. **Section 71 be amended to allow the method of service to include telecopiers (fax).**
Presently all notices or documents relating to a residential tenancy must be served in person or by registered mail. Limiting service of documents to in-person or registered mail creates unnecessary time delays. The most recent amendments to the Northwest Territories Rules of Court now recognizes telecopiers (Section 40) as an acceptable form of service.

9. **Repeal sections 51(2) and 52(2)**
These two sections permit a landlord to legally terminate a tenancy agreement by notice alone, simply on the basis that the premises were the only residence of the landlord in the territories. It is unclear why this criteria should permit a landlord to terminate such a tenancy without a breach by the tenant or other cause. It is unfair, in my opinion, to deny reasonable security of tenure to tenants in these cases. Even if this provision is judged as reasonable, the "single premises" criteria in section 51(2) is absent in section 52(2) making the provisions clearly inconsistent.

10. **Consider a requirement for notice to the tenant where a subsidized public housing landlord or employer landlord does not intend to renew a term agreement.**
Section 49(3) exempts subsidized public housing landlords and employer landlords from the security of tenure provisions of section 49. This means that tenancy agreements made for a term are not automatically renewed, but expire at the expiry date. Providers of subsidized public housing have been successful in obtaining writs of possession where the tenant has failed to vacate the premises after a term agreement has expired. In my opinion, a requirement to provide reasonable notice to vacate should be required, either before or after the term expires in order to seek a writ of possession. Thirty days should be sufficient.

11. **Revise sections 76 and 77 regarding mediation and the decision to hold a hearing.**
Section 76 requires the Rental Officer to inquire into a matter arising from an application and assist the parties in resolving the matter by agreement before holding a hearing to determine the matter. Most applications involve the non-payment of rent and many are uncontested by the respondent. The applicant/landlord in these cases does not simply want an agreement by the tenant that rent will be paid, they seek an order that can be enforced if payment is not made. The Rental Officer may only issue an order after making a determination through a hearing.

The requirement to inquire into the matter only serves to add time to the process. Removing the requirement would not diminish the Rental Officer's ability to mediate where mediation is possible. In many cases, particularly those involving rent, the remedy contained in the order is a result of mediation that takes place in the context of a hearing. For example, it is common for a Rental Officer to mediate an agreement pertaining to how rent arrears are to be paid, Often a schedule of payment is arranged or a deadline for payment agreed to by both parties.

It is suggested that the wording in Section 76 be altered by changing "shall inquire" to "may inquire", giving the Rental Officer the flexibility to determine without inquiry, whether a matter should proceed directly to hearing.

Similarly it is suggested that section 77(1) be altered to remove the reference to inquiry to read, "Where a rental officer is of the opinion that.....

12. **Revise section 14(6) to permit a Rental Officer to make an order terminating a tenancy agreement where a tenant has failed to provide a security deposit in accordance with the tenancy agreement and Act.**
Section 14(6) sets out remedies pertaining to both landlord and tenant breaches of the security deposit provisions. It permits a Rental Officer to make an order requiring a tenant to pay the required security deposit to the landlord but does not permit a Rental Officer to consider an order terminating the tenancy agreement.

Ironically, section 54(1)(c) permits a landlord to serve a notice of termination on a tenant when the tenant has failed to give the landlord the required security deposit. On hearing the matter, the Rental Officer may consider the remedy of termination pursuant to section 54(4). I see no reason why the remedy of termination should not be considered solely on the basis that a notice under section 54 was not provided by the landlord. There is no such inconsistency between sections 41 and 54 pertaining to rent or between sections 43 and 54 pertaining to quiet enjoyment.

Statistics for the Year
January 1, 2001 to December 31, 2001

Applications to a Rental Officer
1997-2001

	1997	1998	1999	2000	2001
Applications Filed	587	470	339	448	339
By Landlords	534	450	302	409	295
By Tenants	53	20	37	39	44
Applications Heard	468	429	240	295	221
From Landlords	431	413	218	264	195
From Tenants	37	16	22	31	26
Applications Withdrawn	205	184	122	132	106
By Applicants	145	156	79	102	67
By Rental Officer	60	28	43	30	39

Hearings Held, by Community and Type
2001

Community	in person	by phone	by video	TOTAL
Yellowknife	114	2	0	116
Inuvik	34	7	4	45
Hay River	0	28	0	28
Fort Providence	16	0	0	16
Fort McPherson	0	5	0	5
Fort Smith	0	3	0	3
Fort Simpson	0	2	0	2
Norman Wells	0	2	0	2
Tulita	0	2	0	2
Tuktoyaktuk	0	1	0	1
Tsiigehtchic	0	1	0	1
TOTAL	164	53	4	221

Remedies Ordered After a Hearing
2000-2001

Landlords	2000	%	2001	%
Rent (Section 41)	387	68%	330	76%
Tenant Damages (Section 42)	53	9%	27	6%
Disturbance (Section 43)	40	7%	36	8.3%
Other Obligations of Tenant (Section 45)	61	11%	22	5.1%
Security Deposit (Sections 14 & 18)	14	2%	9	2%
Loss of Future Rent (Section 62)	3	.5%	6	1.4%
Termination for Sale or Change of Use (Section 58)	1	.2%	1	.2%
Compensation for Overholding (Section 67)	1	.2%	1	.2%
Tenants	**2000**	**%**	**2001**	**%**
Security Deposit (Section 18)	14	41%	13	50%
Maintenance (Section 30)	2	6%	4	15%
Disturbance (Section 34)	6	18%	4	15%
Vital Services (Section 33)	12	35%	4	15%
Locking Devices (Section 40)	0	0%	1	4%

Terminations Ordered
1997-2001

	1997	1998	1999	2000	2001
Requested by Tenant	2	0	1	1	0
Requested by Landlord	81	98	63	104	89
As % of Applications Heard	18%	23%	27%	36%	40%

*includes orders which terminate tenancy agreements only if specific conditions are not met.

Value of Compensation Ordered
1997 -2001

	1997	1998	1999	2000	2001
Total Orders Granting Monetary Relief	320	285	201	239	175
Total Value of Orders Issued	$716,971	$983,192	$477,161	$514,486	$390,358
Average Value	$2241	$3450	$2374	$2153	$2231

Elapsed Time Between Filing Date and Hearing Date
Applications Heard During Period
2000-2001

	2000	%	2001	%
0-30 days	71	24.1%	58	26.2%
31-60 days	155	52.5%	131	59.2%
61-90 days	49	16.6%	22	10.0%
91-120 days	19	6.4%	6	2.7%
120+ days	1	0.3%	4	1.8%